

# Office Action Summary

Application No.

09/305,178

Applicant(s)

RIBADEAU-DUMAS ET AL

Examiner

ARTHUR L. CORBIN 1765

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

☒ Responsive to communication(s) filed on 5-28-02

☒ This action is FINAL.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

☒ Claim(s) 39, 40, 42-47

is/are pending in the application.

Of the above claim(s)

is/are withdrawn from consideration.

☐ Claim(s)

is/are allowed.

☒ Claim(s) 39, 40, 42-47

is/are rejected.

☐ Claim(s)

is/are objected to.

☐ Claim(s)

are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some\* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/305,178	05/04/1999	GUILLAUME RIBADEAU-DUMAS	6-1032-035	1699

803 7590 08/20/2002

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DES MOINES, IA 50309-4076

EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

28

DATE MAILED: 08/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 39, 40 and 42-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yotka et al (5,458,892) or Meyers et al (5,236,719).

Applicant is referred to the reasoning set forth <sup>in</sup> ~~the~~ in paragraph no. 5, Paper No. 25.

3. Applicant's arguments filed May, 28, 2002 have been fully considered but they are not persuasive. Whereas applicant's Example 2 indicates that a hydrogenated dextrin having a MW of 4500 is better than hydrogenated polydextrose having a MW of 800, there is no factual evidence of record to support a conclusion that applicant's claimed range of 4000-5000 Daltons is critical. In fact, said range is merely preferred <sup>preferred</sup> ~~preferred~~ according to page 11, lines 1-2 of applicant's spec.

Although the claimed water solubility is not disclosed by either primary reference, as applicant argues, the polyols in either reference naturally possess <sup>5</sup> ~~a~~ a low water solubility. Moreover, applicant has not presented any factual evidence to indicate that the claimed water solubility is critical. In the absence of unexpected results it would have been obvious to select a polyol having any low water solubility simply depending upon desired results, personal preference and consumer appeal.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is 703 308-3850. The examiner can normally be reached on Tuesday-Friday from 10 AM to 7:30 PM and on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703 308-3929. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872-9310 for regular communications and 703 872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0661.

Examiner Corbin/ng  
August 16, 2002

ARTHUR L. CORBIN  
PRIMARY EXAMINER  
8-19-02